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COMPENSATION ADMINISTRATION AND ADJUSTMENTS

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The system of workmen's compensation which is now in operation in the greater number of the states of the United States is a radical departure both in principle and practice from its predecessor, the system of employer's liability, which was recognized and enforced by the common law. The difference in principle is that the compensation system is based on a recognition of the fact that industry should bear its proportional part of the financial burdens caused by the industrial accident, regardless of the fact that such an accident may have been caused in part by the negligence of the injured employe, unless that negligence is of such a degree that it can be shown that the injury was wilfully inflicted; while the common law system was based on the proposition that an injured employe must be able to show some legal fault on the part of his employer before any recovery would be allowed for an injury alleged to have been sustained by reason of the negligence of the employer. The difference in practice has its basis in the difference in the administration of the two systems. The common law system of employer's liability placed the employer and employe on a basis of theoretical legal and economic equality, as a result of which the only recourse which the employe had when the employer refused to recognize liability and compensate him for injuries alleged to have been sustained during the course of his employment was to bring the employer into court, establish his right to recover by judicial process, and then collect the judgment at the termination of the proceedings, if judgment was secured and if collection was possible. Inasmuch as the compensation system establishes the right of the employe to recover for his injuries, unless it can be shown that they are the result of his wilful negligence, it is an essential element of that system that this right of recovery should be secured and that the compensation laws should be so administered as to effect the purpose for which they were enacted. This is effected by requiring security for the payments, and by such a supervision

of the adjustments made under compensation laws that injured employes shall receive the full amount which the law allows to them with as much regularity and as little delay as possible.

THE INDICTMENT OF THE COMMON LAW SYSTEM

The particulars in the indictment against the common law system of employer's liability may be reduced to four general specifications. They consist of the uncertainty as to the basis of liability, the uncertainty as to the amount of the recovery when liability is established, the delay which is a necessary incident of legal procedure in enforcing a claim for damages, and the uncertainty as to the payment of a judgment when judgment has been recovered. These were the principal defects of the common law system which it was the object of the compensation system to obviate. All of these specifications were incidents of a system which had as its basis the element of legal fault on the part of a person against whom negligence was alleged. On this basis was imposed the theory of the equality of all litigants in the courts, which theory in its assumption that all litigants are able to stand the delays which are incident to litigation takes no notice of the economic difference in the condition of litigants, and thus practically closes the courts and denies redress to those who are unable to stand the delay and expense of legal procedure.

The compensation system substitutes for the uncertainty as to the basis of liability the requirement that the employer shall compensate for all accidental injuries which an employe may receive in the course of his employment, and which arise out of it, except in the comparatively rare cases in which it can be shown that the injuries were received by reason of the wilful or intentional negligence of the employe himself. It substitutes for the uncertainty as to the amount of recovery a specific amount which shall be paid during disability, or for a specific length of time. Any complete compensation system will substitute for the element of delay which is incident to the common law system of litigation a summary procedure for the determination and enforcement of rights under the compensation law, and it will substitute for the element of uncertainty as to the payment of a judgment a system of security for the payment of compensation which will assure that the injured will receive his indemnity just as specified by the law.

ADMINISTRATION OF THE COMMON LAW SYSTEM

In considering the administrative feature of the compensation system, and particularly that phase of compensation administration which deals with the adjustment of claims under the compensation laws, it is necessary by way of contrast to outline the procedure for the enforcement of a claim under the common law system and thus show the defects of that system, and then show how the compensation system has attempted to remedy those defects. The common law system is based, as has been noted, on the theoretical equality of employer and employe in the eye of the law, the result of which is that in legal procedure each has an equal right to contest to the limit any allegation that may be made by the other, and as employer's liability cases are simply a part of the general work of the courts and are entitled to no precedence over other litigation the injured employe who is a plaintiff must await his opportunity to be heard in turn with all other litigants.

If an employer recognizes his liability to respond in damages to an injured employe, or if for any reason an employer chooses to settle such a claim without litigation, and the parties can agree upon the amount that shall be paid, litigation is then unnecessary. Their agreement is subject to the legal requirement that it must be supported by a sufficient consideration, but wide latitude is given to the parties in determining the sufficiency of the consideration and the law will not disturb any settlement made with an injured employe unless it appears that the consideration is grossly inadequate, or that the settlement was effected by fraud or duress and so should not be permitted to stand. The common law principles as to the assessment of damages may be observed or they may be disregarded, for the law will not interfere with any settlement that is supported by a sufficient consideration and, although the consideration may seem small, still it may be regarded as sufficient in law to support the agreement.

The enforcement of an employer's liability claim under the common law by legal process necessitates recourse to the courts by means of a suit brought by the employe against the employer, alleging injuries received during the course of employment by reason of the negligence of the employer and demanding damages for those injuries. Either party is entitled to a jury to determine questions of fact, and as the allegation of negligence is usually a question of

fact it is incumbent upon the plaintiff to establish his case to the satisfaction of the jury by a preponderance of the evidence. The defendant is allowed to prove, if possible, that the injuries were received by reason of the negligence of the injured himself, or that it arose from dangers inherent in the occupation of the injured of which he was fully cognizant, or that they were received because of the negligence of a fellow-servant, unless these common law defenses have been modified or abrogated by some statutory provisions.

If the jury decides in favor of the right of the plaintiff to recover, it is their duty to assess the damages that shall be awarded, and the latitude which is given to a jury in this respect is one of the principal defects in the common law system. While it is the theory of the common law that the damages assessed shall be compensatory, as far as possible, there is in practice little to limit a jury in the exercise of their function of assessing damages but their own imagination, and the result is a great disparity in the amount of damages assessed in different cases.

Frequently there is considerable delay before an employer's liability case can be tried, and if a verdict is obtained by the plaintiff it may happen that there are some alleged errors in connection with the trial which allow the defendant to appeal. If such an appeal is taken, the delay is almost indefinite and the result uncertain, for it may result in a reversal and dismissal of the suit, or a reversal and an order for another trial. In the former event the right of action is lost, while in the latter the plaintiff is just where he started at the beginning of the litigation. If his verdict is sustained he is then at liberty to proceed to the collection of the judgment. This may be a difficult matter unless the defendant voluntarily pays the judgment, or has property which can be reached by attachment in satisfaction of it.

This brief summary shows that the element of delay is one of considerable consequence in the enforcement of a claim by legal process under the common law rules of employer's liability, for an injured employe may be practically deprived of his rights by reason of the delay which is incident to their enforcement. An incident of this element of delay is that of expense, for it seldom happens that a seriously injured workman has been able of himself to provide for such contingencies, hence the problem of sustenance during the progress of the litigation is both practical and pressing, and this

added to the expense which may be necessary to the litigation frequently causes the relinquishment of valuable rights for much less than an injured employe is legally entitled to receive.

PRINCIPLES OF COMPENSATION ADMINISTRATION

It is, therefore, an essential element of the compensation system that the payment of the benefits which the law provides shall be made as certain as possible, and that these payments shall reach the injured with promptness and regularity. The element of certainty of payment is secured in the well considered laws by a requirement of insurance of some sort, carried by the employer for the benefit of his employes for the security of the payment of the compensation obligations. The element of promptness and regularity of payment is accomplished by vesting the administration of the compensation law in a single official or an official body whose sole duty it is to see that the law is properly administered, and this supervision over the adjustment of compensation claims is one of the vital features of the general subject of compensation administration. Some of the compensation laws which have been passed in the United States cannot be considered complete, even according to present standards of compensation, because of the fact that they fail to require security for the payment of compensation, and also fail to provide any special administrative machinery to supervise their execution. Such laws are necessarily defective in principle even though they may be satisfactory in practice.

The principle of special administrative authorities for particular classes of laws had already been recognized and developed in the United States long before the adoption of the compensation system, so in applying the principle of special administration to compensation legislation, in those states in which this principle was adopted, the legislators were not establishing any new principle but were following precedents already established. The basis of this form of administration is the fact that because of the amount of detail that may be involved in the administration of some laws, and because of the specialized knowledge that their administration may require, enforcement may be ineffective if left to the general executive authorities; or to the parties who may be interested in their enforcement, with recourse to the courts a necessity in cases of disagreement as to the construction and application of the laws.

It is, therefore, to the benefit of all who may be interested that some such laws shall have administrative systems of their own. The administration of any law necessarily involves a combination of executive and judicial functions, for decisions as to the meaning of statutory provisions are necessary at every turn and, while it is the particular function of the judicial department of government to render the authoritative and final decisions as to the construction of all laws, it is often necessary, in the absence of such decisions, that rulings shall be made as to the practical application of laws which shall be made summarily and shall have the sanction of authority, and this can be accomplished in no better way than by providing special administrative machinery for the particular classes of laws which may prove ineffective if appeal to the courts is the only method of securing their enforcement.

This principle of administration had been developed particularly in connection with the regulation of the relations between public service corporations and individuals, and commissions of some sort as intermediaries between the individual and the courts in dealing with these corporations were already common when the compensation laws were enacted. The principle had also been applied to the administration of that class of labor legislation which relates to the safety and health of employes and the regulation of work of women and children by inspection of work places in order to see that the laws were enforced, but no such application of it had ever been made to the laws which related to the liability of the employer for occupational injuries sustained by the employe, so that the creation of commissions to supervise and enforce workmen's compensation laws was an extension of the principle, but this extension seemed justifiable in view of the purpose of the laws.

The European precedents were of little help in determining upon the systems of administration in the United States. The systems in Europe which were studied more than any others in connection with the formulation of our systems were the English system and the German system, and although our systems contain elements taken from both of those systems it may be said that both in form and substance our laws are based more upon the English than upon the German precedent. The administrative features, however, where special administration has been provided, partake more of the German system, for the English law is to a certain

extent defective according to our standards of compensation because of its lack of administrative features, the administration being based upon agreement of the parties or arbitration, with resort to the courts when agreement or arbitration fails. The German system is an elaborate social insurance system, of which the supervision of its administration by the state is an essential element.

As to their administrative features the compensation laws in the United States may be divided into two general classes, those which have not provided for any machinery aside from court procedure for their administration and those which have provided some such machinery. It may be said to the credit of those laws which leave the matter of administration with the courts that they usually provide that the procedure shall be summary, and not subject to the delays and technicalities which are too often incident to judicial procedure. This elimination of technicalities relates both to the form of procedure and the legal rules of evidence, for it is the spirit of any procedure that may be necessary in compensation administration that it shall be free from the technicalities which have developed in legal procedure and in the application of the common law rules of evidence. The states which rely upon court procedure for the administration of compensation laws are in the minority, for the majority of the laws have provided for a special form of administration.

The form varies in detail in the different states which have special administration. It may be vested in a single official or in an official body but, regardless of differences in form, the principle is uniform, for the object is to secure to the claimant a summary decision as to his right to receive compensation, with the procedure as simple and informal as possible; and, if the right is established, to see that the compensation is paid as ordered. In order that the constitutional rights of the parties and the constitutional function of the courts may be preserved, it is provided that appeals may be taken to the courts from the decision of the administrative official or body on questions of law, but that findings of fact shall be binding on the parties.

It may be well to state at this point that in the practical administration of compensation laws, particularly in those states which have a special administrative system, the actual parties in interest are usually the claimant and the insurance carrier. This is because

of the requirement in the greater number of the laws that the compensation obligation shall be insured and the provision that the insurer succeeds to all of the obligations of the employer. So in event of an accident the employer reports the matter to his insurer, and it is then the duty of the insurer to see that all of the provisions of the law are carried into execution. This practical condition simply substitutes the insurer for the employer, notwithstanding the fact that the proceedings may nominally be against the employer instead of against the insurer.

ADMINISTRATION IN DIFFERENT STATES

In order that the procedure of adjustment may be shown, and also that some of the differences in detail may be illustrated, the systems adopted in several of the different states will be outlined as representative of the systems in those states which have provided for a special form of administration. The states selected are Massachusetts, Connecticut, New York and Pennsylvania, the order given being the order in which the legislation was passed in those states. Massachusetts is selected because of the excellence in principle and in practice of the administration of its law; Connecticut, because, although the administration provided may be defective in theory and in principle, in the summary way in which its law is administered it presents an example of excellence that may well be considered; New York because of the importance of the state, and also because of the fact that its law is of limited application and so presents problems of administration which are not present when the law is of general application; and Pennsylvania because of the fact that it is the most recent of the large states to adopt the compensation principle, and its system of administration is worthy of consideration.

The Massachusetts act provides for the appointment of an Industrial Accident Board consisting of five members. When, after an injury, the employer and the employe reach an agreement as to compensation, a memorandum of this agreement is to be filed with the board, and, if the board approves this agreement as in conformity with the terms of the act, it will be enforced. In case of disagreement between the parties an arbitration is necessary, and this arbitration is effected through a committee of three, one each being selected by the employer and employe and the third, who shall

be chairman, being a member of the board. This committee of arbitration investigates and makes its findings, and files its decision with the board. Either party may file a claim for review with the board within seven days after the decision of the committee is rendered. If this claim is filed the board reviews the findings, and it may affirm them, revise them, or refer the matter back to the committee for further consideration. If no claim for review is filed, the decision of the committee stands as the decision of the board. An appeal may be taken to the courts from the decision of the board, or from the findings of the committee if no claim for review has been filed, but this appeal must be upon questions of law, for the findings of the committee or of the board as to questions of fact are final.

The result of this procedure as to the committee of arbitration is in effect the same as it would be if a member of the board acted as sole arbitrator, for in cases of dispute between the other members it is the vote of the member of the board that decides, but the fact that each party is represented on the committee tends to preserve the rights of the parties, and the effect may be that the issue has greater consideration than it would have if the member of the board had nothing to assist him in reaching his decision but the presentation of the case by the parties or their attorneys. The procedure is summary, and there is no cause for delay, except in those cases where it is deemed necessary to have the court rule upon questions of law, and groundless appeals are penalized by allowing the court to assess the whole of the cost of the proceedings on the party who has proceeded without reasonable ground.

The Connecticut act has provided for a system of administration which for practical excellence, particularly in a state of limited area, cannot be surpassed. Five compensation commissioners are appointed, one for each Congressional District. The Board of Commissioners act together for the purpose of adopting rules of procedure and the preparation of reports, but as to the administration of the law each commissioner is supreme in his own jurisdiction, the Congressional District in and for which he was appointed, and the board does not, as a matter of law, take concerted action in any compensation cases. Any commissioner may designate another commissioner to act for him when it is necessary, such as in cases of absence from his district, or in cases of incapacity or disqualification. When an employer and employe fail to reach an

agreement as to compensation the commissioner orders a hearing, with not less than ten days' notice as to time and place to each party. Appeal from the decision of the commissioner may be taken by either party to the Superior Court at any time within ten days after the entry of the findings, and such appeals to the Superior Court are privileged over other actions so that disposition may be summary.

The Connecticut system may be regarded as defective in principle because it provides for no review or confirmation of the decision of a single commissioner by the full board. Such a provision would tend to uniformity in rulings on the part of the commissioners, but this objection, in view of the excellence of the administration in Connecticut, is largely theoretical rather than practical in its nature. In a larger state, particularly one larger in area, the system might not work so well, but in a small state like Connecticut, with the commissioners in close proximity to each other, engaged in a common purpose, and in easy and frequent communication, this system works very well.

The New York act provides for the appointment of a State Workmen's Compensation Commission consisting of five members. The work of the commission is to a certain extent complicated by the fact that the New York act is one of limited application, and further by the fact that the commission has charge of the administration of the State Insurance Fund. The commission is authorized to appoint deputy commissioners. It is incumbent on the commission to determine disputes between employers and employes as to the payment of compensation, and any hearing which it is necessary for the commission to hold may be before either a commissioner or a deputy. The commission also has authority to require the parties to appear before an arbitration committee. The decision of a commissioner or deputy, when approved by the commission, is the decision of the commission. Appeals may be taken on questions of law, or the commission may certify questions of law to the court for decision, but the finding of the commission as to facts is final.

The provisions regarding the administration of the New York law were changed to a certain extent in 1915, in that the State Workmen's Compensation Commission established by the compensation law was abolished, and the functions of that commission were transferred to the State Industrial Commission, which was

established by the law abolishing the Workmen's Compensation Commission. This change was more in form than in substance, for the Industrial Commission was vested with all the powers, duties, obligations and liabilities of the Workmen's Compensation Commission and simply continued with the administration of the compensation law as its predecessor had been administering it. The Industrial Commission was established to take general charge of the administration of the Department of Labor of the State of New York, and the administration of the compensation law was only one of its functions. This change in New York may be regarded as indicative of a tendency to consolidate the administration of all of the laws relating to labor into one body, and it is reasonable to expect that such action may be taken in other states.

The Pennsylvania act provides for the appointment of a Workmen's Compensation Board of three members, which board shall supervise and direct the work of the Bureau of Workmen's Compensation, and it also provides that the Commissioner of Labor and Industry shall appoint as many referees as may be necessary, not exceeding ten in number. When an employer and employe fail to agree as to compensation, the employe may submit the matter to the board and, when the matter is submitted to the board, the bureau shall in turn assign it to a referee for an investigation and report. Appeal may be taken to the board from the findings of the referee, but the findings of fact by the referee are final unless the board allows an appeal, and the board's findings of fact are final in all cases. Appeal may be taken to the court from the board's findings on questions of law.

The laws give to the different administrative authorities the power to summon witnesses and compel the production of any written evidence that may be necessary. It is not usual to vest in these bodies the authority to issue execution to carry out a decree, but the equivalent of this power is provided by authorizing the courts to issue execution on any decree which has become final so, with the full power of the courts behind any such decree, the lack of this power on the part of an administrative body is no essential defect in the system.

As this system of special administration is recognized as a necessity for the practical and efficient administration of compensation laws, this chapter, in dealing with the adjustment of compen-

sation claims will assume that the administration of the law is vested in some special administrative body, and this body will be referred to, as a matter of convenience, as the "commission."

APPLICATION OF THE COMPENSATION LAW

The first question of dispute which can be raised in a state in which the compensation law is limited in its application is as to whether or not a particular occupation is within those to which the law applies. A number of the states have enacted laws which apply only to certain occupations, those occupations being named either by classes or by specification of particular occupations, so that in those states the common law system of employer's liability still exists as to those occupations which do not come within the compensation law. The principle on which this distinction in occupations is based is that some are essentially hazardous in their nature while others are non-hazardous and, as to those which are non-hazardous, there is no necessity for an abrogation of the common law system. It may happen, therefore, that in some cases there is a dispute between an employer and an injured employe as to the application of the compensation law to the occupation in connection with which the injury was sustained and, if this issue is present, the commission must, in the first instance, determine whether or not the law applies.

This issue as to the application of the law may arise to a very limited extent in those states in which the laws are of general application, for practically all of the laws contain some exceptions of occupations which do not come within the law. The exceptions which are practically universal are those of domestic and agricultural service, but in addition to these there may be other exceptions which have been inserted because of local considerations, and if any issue as to the application of one of these laws arises it is necessary for the commission to make a decision as to coverage.

MEANING OF WORD "ACCIDENT"

If no issue as to the application of the law is present, the next question which may arise for determination is that as to whether or not the occurrence which resulted in the disability is an "accident" within the meaning of the word as used in the compensation law. No attempt will be made here to frame any definition of the word

as it is used in this connection. In the great majority of cases the circumstances of the occurrence are so plain that there is no doubt that an "accident" has happened and is responsible for the disability. But in some cases disability may arise when it is claimed that an alleged accident is responsible for it, and that, therefore, indemnity should be paid under the law, when it seems that there is a reasonable doubt as to whether the disability can be traced to any "accident" as this word is used and understood within the meaning of the compensation law. The most frequent instances of cases of this nature are those in which it appears that some disease is responsible for the disability, but it is claimed that the disease had its origin in some alleged accident. The general rule in such cases is that, if the disease is a result of the accidental injury, it should be regarded as a compensation case for the disability caused by the disease or for death, if death results from it, but that if the disease arose independent of any such injury it is not within the provisions of the compensation law. This rule goes to the extent of holding that any disease which arises during the disability caused by accidental injury and which may be directly traced to the injury is covered for compensation. Any issue of this nature is a medical issue, but it is essentially a question of fact and so is on the commission for determination.

A few illustrations will show the nature of the cases of this kind which are presented for decision, and some of the decisions of the Industrial Accident Board of Massachusetts will be used as illustrative. The Massachusetts decisions are not cited in any attempt to emphasize the excellence of the administration in that state, but because of their availability. The references in this paragraph are to the Massachusetts Workmen's Compensation Reports. In *Twoomey's case*, 2 Mass. 540, an employe had been injured by being kicked by a horse and was incapacitated about a month. After resuming his regular occupation he became ill of an ulcer of the stomach and died. His widow claimed compensation, alleging that this ulcer arose from an injury sustained in his employment. A committee of arbitration held that the medical evidence did not substantiate this allegation, and the decision was accepted without appeal. In *Lynch's case*, 2 Mass. 591, an employe was injured in May and in September died from acute dilatation of the heart caused by uremic poisoning. It was held that the widow was not

entitled to compensation, for no causal connection was shown between the injury and the disease which caused death. In *Merritt's case*, 2 Mass. 635, an employe had received a severe strain from which paralysis resulted, and about a year subsequent to the injury contracted pneumonia from which he died. It appeared that because of his exhausted vitality and reduced power of resistance he was unable to resist the attack of pneumonia, and as his weakened condition was due to the disability caused by the accident it was held by the committee of arbitration that his widow was entitled to compensation. The finding of the committee was approved by the Industrial Accident Board.

RELATION OF DISEASE TO COMPENSATION

The court in Massachusetts has gone further than that of any other state in extending the protection of the compensation law to diseases which may arise in connection with employment, and this attitude of the Massachusetts court is justified by a distinction which it indicates between the language used in the Massachusetts act and that used in the English act and the acts in many of the other states. The Massachusetts act relates to "personal injury" arising out of and in the course of employment, while the English act and the other acts generally relate to "personal injury by accident" sustained under similar circumstances. The term "personal injury" used in a broad sense may include disability caused by disease which may be directly attributed to employment as well as disability caused by accident, and the logical conclusion which the Massachusetts court has drawn from the failure of the legislature to restrict the operation of the act to personal injury by accident is that it was the legislative intention to have the act apply to sickness which might arise from employment as well as to the disability which might be caused by an accidental injury. This particular phase of the application of the Massachusetts act is discussed by the Supreme Judicial Court in *Madden's case*, 222 Mass. 487. In that case the claimant, an employe in a carpet mill, had strained herself by pulling carpets over a table and the strain accelerated a weakened condition of the heart and caused incapacity for work. It was held that when there was a direct causal connection between the employment and the disease an award of compensation could be made. The substantial question is whether the diseased condi-

tion independent of any of the hazards of employment was the cause of disability, or whether the employment was a proximate contributory cause; in the former case no award could be made, but in the latter it ought to be made.

One of the most troublesome questions which has arisen in connection with the administration of compensation claims is that of the treatment of claims for disability caused by hernia. This is because of the fact that the best medical testimony is to the effect that hernia is the result of a preëxisting bodily condition, and partakes more of the nature of a disease than that of an accident, and from the nature of the case is never traumatic in its origin, but the rupture which is the consummation of the hernia usually follows some strain, and when this strain occurs in connection with employment the natural effect is to attribute the hernia to an occupational injury and demand compensation. The tendency on the part of the commissions is to connect the hernia with the alleged accident, if there is any basis for such a decision, and award compensation. Hernia claims often constitute a class by themselves, and they are sometimes made the subject of a special rule which shall apply to that class, such as the allowance of a regular operation fee and compensation for a definite period in all hernia cases. The Kentucky act, which is the most recent compensation law to become operative, has made special provisions for hernia claims, when it can be shown that hernia results from an injury, by specifying surgical benefits when an operation is performed up to two hundred dollars, and compensation for twenty-six weeks.

The consideration of the matter of the coverage of disease under compensation acts involves two phases of the subject, one of which, that of diseases which are general in their nature and are not peculiar to any particular occupations, has just been noted. The other phase is that of diseases which arise from particular occupations, usually from contact with substances used in connection with those occupations, and are termed "occupational diseases." Under the rule adopted in Massachusetts that the term "personal injury" as used in the act is broad enough to cover injury from disease as well as that caused by accident, the Supreme Judicial Court has held that occupational diseases are covered for compensation, but the general rule in the other states, even where the acts do not particularly specify that they relate to "personal

injury by accident," is that occupational diseases do not come in the scope of personal injuries within the meaning of the compensation law, and compensation is denied for disability caused by these diseases.

WAITING PERIOD

No compensation is payable under any of the acts unless the disability extends beyond a certain period, the "waiting period," so called. Various considerations are responsible for the insertion of this provision in the compensation laws. One reason is the attempt to discourage claims for minor injuries and to encourage the injured to return to work as soon as possible in cases where the disability does not extend beyond the waiting period; another reason is that under compensation the injured must bear some portion of the financial loss caused by industrial accidents, and the loss from disability during the waiting period is a part of the loss which he must stand. The waiting period has usually been fixed at not over two weeks, and some of the laws have provided that in cases where the disability extends beyond a certain period, say six or eight weeks, the waiting period shall be eliminated and compensation paid from the beginning of the disability. The tendency is, in connection with amendments to the compensation laws, to reduce the length of the waiting period, so that in some states where it was originally two weeks it is now ten days, and it has even been reduced to one week.

STATUTORY MEDICAL AID

While no compensation is payable as a general rule during the waiting period, the provision is almost universal that during this period, or during a period which may not necessarily correspond with the waiting period, for it is usually longer than this period, the injured shall be furnished the necessary medical and surgical attention, and all of the incidents of that attention, such as medicines, hospital services, etc. This obligation is usually limited both as to the time within which the medical or surgical aid shall be rendered and as to the amount of expense which shall be incurred for such attention, and the administration of this provision of the law is one of the first administrative difficulties encountered after it has been determined that an accident is within the provisions of the compensation law.

If the necessary treatment can be rendered within the time specified by the law and at an expense not exceeding the limitation of the law, no complications arise, but if treatment is necessary beyond the specified period, or if the necessary expense is in excess of the limitation, or if both of these elements concur as they frequently do, the case involves its complications. The authority is usually given to the commission to regulate the charges for these services, and if the excess in amount is the only element the commission may, by using this authority, bring the charges within the limit. If this is impractical the only action that can be taken, in justice to all parties, is to prorate the limit among all of the creditors, paying each one a proportional share. If the employer or the insurance company carrying the risk does not pay the balance the only way in which payment can be effected is by pressing a claim against the injured, and if he is unable to pay the creditor loses the balance.

In view of this practical consideration, the tendency is to remove the arbitrary limits both as to the time within which this treatment is to be rendered and as to the amount of expense for such treatment. The requirement of the Connecticut law passed in 1913 was that these services be furnished for thirty days immediately following the injury without any limitation as to the amount of the expense to be incurred; the legislature of 1915 removed this limitation as to time so that the requirement is now unlimited both as to time and expense. The Massachusetts law passed in 1911 provided for reasonable medical and hospital service for two weeks after the injury without any limitation as to expense. This period was manifestly inadequate and inequitable in serious cases, and the law was amended in 1914 so as to allow the Industrial Accident Board in its discretion to extend the time in unusual cases. In commenting on this general provision it may be said that the method adopted in Massachusetts has advantages over the Connecticut method, for it is a practical necessity that strict supervision be exercised in the administration of this provision of the law, and if the commission has an opportunity to pass upon the necessity for such further treatment before it is rendered, and authorize it if the circumstances seem to warrant such authorization, the power of supervision is manifestly much more effective than it can be in cases where physicians or surgeons are at liberty to render such

services as they think necessary subject to a review of the charges by the commission after the services have been rendered.

THE MEDICAL ELEMENT IN COMPENSATION

The importance of the medical element in compensation administration cannot be overestimated. One phase of this element, that of medical and surgical attention following an injury, has just been mentioned. It is the purpose of this provision in the laws to minimize the effects of an injury as much as possible and to facilitate recovery in all cases where recovery is possible. The power given to the commission to regulate the charges of physicians and surgeons for these services is regarded as essential for, inasmuch as the compensation system imposes extra financial burdens on the employer, it is one of the objects of that system to reduce all compensation expenses to a minimum. The attempt is made, therefore, to keep the charges for medical or surgical attention within the scale which would be applied if the injured, instead of the employer or an insurance company, were paying them, and this is why the authority to regulate these charges is vested in the commission. It is sometimes specified in the law that the charges shall be the same as they would be if the injured were paying them himself, but if there is no such provision it is assumed that the commission will keep the charges within this limit.

Another important phase of the medical element in compensation is that of the assistance which it is necessary for the commission to have from the medical profession. In decisions as to whether or not disability has terminated, decisions as to the length of disability, and, in short, in all cases where the question in dispute is essentially a medical question, it is necessary that the commission have the best medical testimony available for its assistance. All questions of this nature are questions of fact and the decision of the commission is final. In order that the commission may have the necessary power to enforce its authority over disputed questions as to the length of disability, and other medical questions, the different laws provide that the injured shall from time to time submit himself for examination by an impartial physician, as directed by the commission, and the report of the physician is the basis upon which the commission must, as a practical proposition, rely in making its decision. If the injured refuses or obstructs such an

examination his compensation may be suspended until he submits to the examination. The impartial physician is, therefore, a very important factor in the proper administration of the compensation laws for, when the opinion of the physician representing the injured differs from that of the physician who represents the employer, the opinion of a physician who represents neither party in interest must necessarily possess great weight.

DISABILITY PAYMENTS

The disability for which compensation is payable in non-fatal cases is of two kinds, total and partial, and each kind in turn consists of two elements. Total disability may be either permanent or temporary, and the same is true of partial disability. In cases of total disability the compensation is proportioned to the average weekly wages of the injured, ranging from one-half to two-thirds in the different states and usually subject to a maximum and a minimum, during total disability, and subject also to any limitations as to time and amount that may be specified in the law. This total disability may be either permanent or temporary, and if it is temporary the payments for total disability cease when the total disability ceases. The laws frequently specify some particularly serious injuries which shall constitute total permanent disability, and unless the injury comes within one of the specifications the question as to whether or not the disability is total and permanent is one for the commission to determine, aided by the necessary medical testimony.

The payments for partial disability are based upon the loss in earning power occasioned by the injury, the proportion ranging the same as that for total disability. For instance, a workman earning fifteen dollars a week is injured and after recovery he is obliged to go back to work for ten dollars a week because of some disability caused by his injury. His compensation for this disability would be the proportion of this loss in earning power of five dollars a week specified by the law during the continuance of the partial disability, subject to any limits as to time and amount fixed in the law. It is frequently specified in the laws that certain injuries which may involve permanent partial disability shall be compensated by making the payments allowed for total disability for a certain time, these payments to be in lieu of all other compensation. This provision refers to certain dismemberments which do not necessa-

rily cause permanent total disability for all employments, even though they may destroy the ability of the injured for further work at the employment in which he was working at the time of the injury. The determination of the allowance which shall be made in cases of partial disability rests with the commission in event of disagreement between employer and employe, and any agreement made by the parties as to payments in these cases must, as a general rule, have the approval of the commission before it can become effective.

PAYMENTS IN FATAL CASES

The payments in cases where death results from the injury depend on whether or not any dependents survive, and in the event of surviving dependents the payments depend further upon the nature of the dependency. In cases where there are no dependents, the payment is usually limited to the expenses of the last sickness and funeral expenses, subject to a specified limit. In case of total dependents surviving, the payments usually correspond to what would have been paid to the injured during his total disability had he survived. In cases of partial dependency, the payments are a proportional part of those for total dependency, the amount being determined by the degree of the dependency. The laws usually specify certain relationships which when shown constitute total dependency; in all other cases where dependency is alleged, either total or partial, the question is one of fact for determination by the commission.

In dealing with fatal cases, therefore, it will be seen that the compensation principle departs from the common law principle, or, speaking with greater accuracy, from the principle established by the statutes giving a right of action for death by wrongful act, which by usage came to be regarded as a part of the common law system. The statutes generally allowed that action to the personal representatives of the deceased in cases where no dependents survived, but the compensation system recognizes only the right of dependents so, if no dependents survive, nothing is recoverable under the compensation law. This right may in turn be lost if for any reason dependency ceases, as may happen in case of the remarriage of a widow, or the period of dependency may be terminated by law, as in case of a minor reaching a certain age at which

the law presumes that he can support himself, unless in fact further dependency is shown. The right to receive compensation is personal to the dependent and is in no sense a vested interest, so the dependent has nothing which he can pass on or which his personal representatives are entitled to receive in event of his death.

CONSERVATION OF COMPENSATION PAYMENTS

It is the object of the compensation system that the payments to the injured, or to the dependents in fatal cases, shall be made in substantially the same manner as wage payments, at regular intervals and in regular amounts. The party who makes the payments, therefore, either the employer or his insurer, is required to see that the payments are made as specified by law or by the commission, and that they reach the person or persons for whom they are intended. In order that the beneficiaries may have the full benefit of the payments it is usually provided in the statutes that any assignment of the right to compensation shall be invalid, and also that any payments that may be due shall be exempt from attachment while in the possession of the employer or of the insurance company.

It is intended to keep the procedure to determine and enforce the right to compensation as simple and informal as possible, and in view of this simplicity in procedure there is nothing to prevent a claimant from acting as his own attorney in compensation proceedings, particularly in those before the commission; if an appeal is taken to the courts it may be necessary for the claimant to be represented by an attorney. The aim is, however, to keep all litigation down to a minimum, and to keep the expenses of any litigation that is necessary as low as possible. As the authority to regulate the fees of physicians is given to the commission, in the interest of the employer, so in the interest of the employe the authority to regulate the fees of any attorney that may appear for the claimant is usually given to the commission.

It was one of the practical defects of the common law system that, when liability was recognized and a settlement was made, or when for any reason a settlement was made without suit, or when a judgment was collected after recovery by suit, the amount which the injured received was paid to him in one sum. The effect of this practice was that the money received was frequently dissipated,

and the injured was then no better off than he had been before the recovery of his damages. The provisions of the compensation laws regarding the frequent and regular payment of indemnity were adopted in order to overcome this defect in the operation of the common law system, and this practice in compensation administration negatives the idea that the benefits should be paid to the injured in a single amount, or in several amounts each one of which would be much larger than the small periodical payments. The law, however, recognizes the fact that in some cases there are reasons why a lump sum settlement to be paid in one amount, or a settlement which shall be made in several larger amounts rather than in numerous smaller amounts, may be advisable, and in recognition of this fact the different laws have provided for commutation of the future payments under certain circumstances. In practice this provision of the law is very closely guarded by the administrative authorities, for if such settlements were generally allowed that practice might almost nullify one of the fundamental principles of the compensation system, that of the conservation of compensation payments. As a general rule a petition for the commutation of the future payments into one amount or into several amounts may be made to the commission by either the employer or the employe, but such a petition will not be granted unless reasonable grounds are shown for its advisability. The basis on which a commutation is usually made is that of the present value of the future payments at the time of the commutation, discounted at a given rate of interest. In cases where the length of disability is practically certain the commutation is a simple matter; in cases where the length and nature of the disability is uncertain the commutation must be made on the basis of an estimate.

INSURANCE OF THE COMPENSATION OBLIGATION

The important element of the compensation system as far as the interest of an injured workman in it is concerned is that he shall have his right to compensation determined with as little delay as possible, and then when the right to compensation has been established that he shall receive the payments as provided by the law. Inasmuch as the insurance of the obligation is an essential factor in affording security for the payment of compensation, the insurance adjuster, as a representative of the insurer, assumes a position of

much importance in the performance of this function of the system. When an accident has been reported to the insurer by a compensation policyholder it is the adjuster who makes the investigation in order to determine whether or not the accident is covered under the compensation law. The report of the adjuster and the information furnished by him is the basis for any ruling that the insurance company may be obliged to make as to the coverage of the accident. If there is no question as to coverage and the disability lasts beyond the waiting period it is the adjuster, as the representative of the insurer, who sees that the injured gets his compensation according to the law. Any medical questions that may present themselves are discussed with the physicians by the adjuster, and the adjuster frequently represents the insurer in any negotiations with the administrative authorities that may be necessary. In those negotiations with the authorities which are merely formal the adjuster may also represent the injured, and assist him in any matters in which there is no conflict of interest between the claimant and the insurer. It will be seen, therefore, that the position of the insurance adjuster is a vital one in the compensation system.

The protection by insurance of the employer against the liability imposed by the common law was extensively practiced prior to the adoption of the compensation system, and it may be supposed that the insurance of the compensation obligation is but a natural and logical extension of this practice of carrying insurance to protect against the common law obligation, but the difference in the basis on which the insurance of each obligation rests is radical. The policy which was issued to the employer to protect him against his common law liability was for the protection of the employer rather than for the security of the employe, and it was an agreement between the employer and the insurer, limited in its extent, in which the employe had no legal interest. The policy covering the compensation obligation, on the contrary, is issued for the benefit of the employe, is unlimited in its extent so that it must provide for the assumption of the whole compensation obligation, and the employe can enforce the obligation directly against the insurer.

This difference in basic principles will account for the difference in the attitude of an insurance company in adjusting a claim under an employer's liability policy and one under a compensation policy. The liability companies have been subject to much undeserved

criticism for their alleged practices in adjusting liability claims, but a considerable proportion of this criticism has been due to a misunderstanding of the function of liability insurance, for it was assumed as a basis for the criticism that the liability policy was carried for the benefit of injured employes, and that an insurance company was attempting to evade its obligations when it failed to make immediate settlements. The answer to this criticism is that the insurer under a liability policy accepts only the common law liability of the employer, and has the same right to deny liability and contest a claim that the employer himself has and, in addition to this, the element of the measure of damages is so indefinite that it is often exceedingly difficult for an injured employe and an employer or his insurer to agree upon any reasonable amount in cases where liability exists, for the demand of the injured in such cases is usually far in excess of what an employer or an insurance company would pay without a contest, so the only alternative is to leave the matter to the courts for determination. The attitude of an insurer under a compensation policy is that the claims which may come under the law will be paid with all reasonable expedition in order that the purpose of the law may be carried out, and that claims for compensation will not be contested unless there is some reasonable basis, either in law or in fact, for contest. This is the spirit of compensation administration generally, and it is much to the credit of all administrative authorities in the United States, both the courts and the special administrative bodies, that, as far as the indemnity payments are concerned, the laws have been administered with an honest intent to execute their purpose, and in a spirit of fairness to all who are interested in their administration.